

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

ERNESTO V. BELL

MOVANT

v.

No. 2:09CR9-M-S

UNITED STATES OF AMERICA

RESPONDENT

MEMORANDUM OPINION

This matter comes before the court on the *pro se* motion under 28 U.S.C. § 2255 by Ernesto V. Bell to vacate, set aside, or correct his sentence. Bell was convicted in the Western District of Missouri for conspiracy to distribute 50 grams or more of cocaine base. His term of supervised release was revoked, and he was sentenced to serve 36 months of imprisonment. He appealed his conviction and sentence, arguing that the sentence was unreasonable. The Fifth Circuit Court of Appeals held that the sentence imposed was neither unreasonable nor plainly unreasonable.

Bell argues again in the present § 2255 motion that the 36-month prison sentence is unreasonable. A movant under 28 U.S.C. § 2255 faces procedural *bar*¹ if the Court of Appeals has already ruled on a given issue – and procedural *default*² if the movant fails to raise the issue on direct appeal. Therefore, as the Fifth Circuit has already decided this issue, this court may not revisit it. For this reason, the present motion to vacate, set aside, or correct the sentence of

¹*United States v. Kalish*, 780 F.2d 506, 508 (5th Cir.), *cert. denied*, 476 U.S. 1118 (1986).

²*United States v. Frady*, 456 U.S. 152, 164, 102 S.Ct. 1584, 71 L.Ed.2d 816 (1982); *United States v. Shaid*, 937 F.2d 228, 231-32 (5th Cir.1991).

Ernesto V. Bell will be dismissed as procedurally barred. A final judgment consistent with this memorandum opinion shall issue today.

SO ORDERED, this the 8th day of March, 2011.

/s/ MICHAEL P. MILLS
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI